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February 14, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

BY HAND

Re: CC Docket No. 96-262 -- Reply Comments
of IXC Long Distance, Inc.

Dear Mr. Caton:

On behalf of IXC Long Distance, Inc. ("IXCLD"), enclosed please find an original and sixteen (16) copies of IXCLD's Reply Comments in the above-referenced matter. Two (2) copies of IXCLD's Reply Comments are also being filed with the Commission's Competitive Pricing Division. Finally, a diskette with IXCLD's Reply Comments in WordPerfect 5.1 is enclosed.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Gary L. Mann / 1/97
Gary L. Mann

Enclosures
cc: Competitive Pricing Division

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Usage of the Public Switched Network by Information Service and Internet Access Providers

[illegible]

CC Docket No. 96-263

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February 14, 1997

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FEB 14 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 91-213
and Pricing)	
)	
Usage of the Public Switched)	CC Docket No. 96-263
Network by Information Service)	
and Internet Access Providers)	
)	

**REPLY COMMENTS OF IXC LONG DISTANCE, INC. ("IXCLD")
ON NOTICE OF PROPOSED RULEMAKING**

I. Introduction and Summary

The comments submitted in this proceeding by the incumbent local exchange carriers ("ILECs") uniformly argue that the Commission should adopt a market-based approach to access charge reform. The ILEC argument is based in substantial part on the chimerical assertion that local exchange competition is a reality. This ILEC assertion is flatly wrong.

Empirical data demonstrates that no meaningful local exchange competition yet exists. Given this circumstance, if a market based approach to access charge reform is adopted, the ILECs would have no incentive to reduce access charge prices to forward looking costs. Instead, given the windfall profits that access charges currently generate,

the ILECs would have every incentive to continue to thwart the emergence and development of local exchange competition, which is exactly what the ILECs are doing now.

Despite their professed endorsement of local exchange competition, ILEC actions belie their rhetoric. As the Commission is well aware, the ILECs have launched a concerted campaign to challenge and to overturn state PSC interconnection orders. Consequently, there is no reason to believe that the ILECs would permit the operation of free market principles to encroach on the huge profits they currently derive from monopolistic local exchange and local access services.

Against this background, it is clear that the Commission must prescribe an access charge structure, based on TELRIC, to be used until such time as facilities-based local exchange competitors exist and provide alternative sources of local exchange access. Moreover, the existence of effective facilities-based local exchange competition should be a prerequisite to RBOC re-entry into the provision of in-region interLATA long distance services pursuant to §271 of the Telecommunications Act of 1996 ("1996 Act").

In considering which approach to access charge reform to adopt -- prescriptive or market-based -- the Commission should be mindful that, contrary to the assertion of the ILECs, no impermissible Fifth Amendment taking would be occasioned by the prescription of an access charge structure based on TELRIC costing. Therefore, given the current absence of any form of meaningful local exchange competition, IXCLD urges the Commission to adopt and follow a prescriptive approach to access charge

reform and to not adopt a "revenue neutral" approach to such reform.

II. A Prescriptive Approach to Access Charge Reform is the Only Rational Choice in Light of the Facts (NPRM §VI)

Despite ILEC arguments to the contrary¹, the simple fact remains that no form of meaningful local exchange competition currently exists. The absence of local exchange competition is well documented. For example, a study released on January 28, 1997, by the consumer group Americans for Competitive Telecommunications ("ACT"), which evaluates the level of progress toward local exchange competition in 15 states, concludes not only that very little progress has been made but even more significantly that "[m]ost local market are still monopolized by the local phone companies, and lack significant competition for most of their business markets."²

The significance to this proceeding of ACT's conclusion is obvious. Without the existence of effective local exchange and local access competition, the ILECs have no incentive to reduce access charge prices to levels consistent with forward looking costs. Rather, in the absence of meaningful competition, the ILECs have every incentive to try to preserve their inflated monopoly-derived rate structures so as to enable the ILECs to continue to reap monopoly-based windfall profits. That incentive goes a long

¹ See Comments of: Ameritech at pp. 36-50; Bell Atlantic/Nynex at pp. 8-15; Bell South at pp. 40-52; GTE at pp. 10-16, 66-78; Pactel at pp. 12-15, 17-44; SWB at pp. 11-32; U.S. West at pp. 24-50.

² The ACT study is available on the Internet at <http://www:consumers.com/acthomepage.html>.

way toward explaining the disparity between ILEC stated support for local exchange competition and concerted ILEC actions to thwart the development of such competition.

As the Commission knows, the ILECs -- especially US West and GTE -- have mounted concerted attacks on state PSC efforts to engender local exchange competition. In addition to challenging state PSC interconnection decisions, US West has embarked upon an effort in its 14 state territory to assess fees on nascent competitive local exchange carriers ("CLECs"), ostensibly to be used for the "network rearrangement" costs US West says it will incur for hardware and software reconfigurations allegedly necessary to accommodate the CLECs. According to one source, US West has estimated that these costs may reach \$1 billion over three years. In Washington state, for example, US West has proposed monthly fees on CLECs of about \$144,000 for interconnection, \$35,000 for unbundling and \$9,000 for resale. Alternatively, in Washington state, US West has proposed a monthly surcharge of 76 cents per access line.³ Efforts such as these, which find no support in the 1996 Act, have only one purpose -- to thwart local exchange competition.

SWB has chosen to use both the state and federal courts to obstruct the introduction of competition in the local exchange market.⁴ In its state court and federal court filings to block Texas Public Utility Commission (TPUC) approved interconnection

³ See Telecom A.M., Vol. 3, No. 20 at 4 (Jan. 31, 1997).

⁴ Southwestern Bell Tele. Co. v. Public Utility Comm'n of Texas, et al., Case No. 9700771, Travis County District Court, 353rd Judicial District (January 21, 1997); Southwestern Bell Tele. Co. v. AT&T et al., Civil Action No. A97-CA-44, United States District Court, Western District of Texas, Austin Division (January 21, 1997).

rates, SWB argued that the TPUC violated state law by setting loop rates equal to the TELRIC of \$15.00 per month. SWB alleges that its loop cost is \$27.81 per month. If that is true then SWB has filed several anti-competitive rates in its access service, private line and general exchange tariffs. Private Line Services are fully competitive in Texas. For Channel Type 101 SWB only charges \$12.95 per month.⁵ The Type 101 Channel is a pair of metallic wires, the simplest form of a loop. SWB also offers Centrex II intercom, exchange access lines and local exchange access at rates as low as \$9.45 per month for off-premises stations to a high of \$19.80 per month for on-premises stations.⁶ SWB's offerings include more than the mere loop, but at a rate much less than SWB's alleged \$27.81 per month cost. SWB also offers Centrex III "Fully-Restricted Lines" for \$18.00 per month,⁷ substantially less than \$27.81.

SWB offers competitive access services at rates below its alleged \$27.81 cost. For example, the two-wire telegraph channel termination is offered at \$24.22 per

⁵ Its Channel Type 101 is distance sensitive based upon the distance between the customer's premises and SWB's serving central office. Type 101 rates are \$3.70 for the first 1/4 mile and \$1.85 for each additional 1/4 mile. SWB Private Line Service Tariff, Section 2, Original Sheet 5 (effective September 28, 1992). The average physical loop length is 10.8 kilometers (2.06 miles). Assuming a route-to-air mile ratio of 1.5, the average air mile (billing) length would be 1.5 miles. Thus, the average rate is \$12.95.

⁶ Off-premises rates for rate group 1: Intercom - \$3.45; Exchange Access Line - \$0.55; Local Exchange Access - \$5.45. On-premises for rate group 8: Intercom - \$5.70; Exchange Access Line - \$5.95; Local Exchange Access - \$8.15. SWB General Exchange Tariff, Section 4, Original Sheet 7 (effective July 17, 1992). SWB's tariff states that all three rate elements cannot be purchased separately. SWB General Exchange Tariff, Section 4, Sheet 4, (Revision 1), paragraph 1.24 (effective July 19, 1994).

⁷ SWB General Exchange Tariff, Section 4, Original Sheet 17 (effective July 17, 1992).

month⁸ while the voice grade channel termination is offered at \$20.06 per month.⁹

SWB's Plexar service is also highly competitive. Yet, SWB offers access lines for Plexar at rates as low as \$5.00 per month.¹⁰ Obviously, SWB's Plexar access line rates are considerably below SWB's alleged \$27.81 per month cost.

Moreover, SWB does not charge the full amount of the Business End User Common Line (EUCL) Charge per physical loop. Rather, it charges the EUCL based upon the PBX trunk equivalent.¹¹ Thus, while SWB argues that it needs universal

⁸ The Channel Termination rate element includes much more than just the loop. It also includes terminating and signalling equipment as well as any other conditioning equipment necessary to make the loop function as a telegraph grade service. SWB's Intrastate Access Service Tariff, Section 7, Original Sheet 47 (effective February 24, 1993).

⁹ The Channel Termination rate element includes much more than just the loop. It also includes terminating and signalling equipment as well as any other conditioning equipment necessary to make the loop function as a voice grade service. SWB's Intrastate Access Service Tariff, Section 7, Original Sheet 60 (effective February 24, 1993).

¹⁰ SWB's General Exchange Tariff Section 5, Original Sheet 30 (effective June 23, 1992). SWB will likely argue that it has completed special studies showing that the costs for Plexar loops is much lower. Similar special studies could also be done for competitive local exchange service. For example, under the arbitrated Texas interconnection agreement, the interim loop rate is \$15.00 per month. Yet, SWB's rates for residential local exchange service are between \$8.15 and \$11.05 per month. Local Exchange Tariff, Section 1, Sheet 3 (effective January 24, 1992). Obviously a new entrant cannot compete for residential service when it has to pay \$15.00 per month for the loop element alone. A new entrant would be forced to compete only for business customers in the metropolitan areas. A loop cost study specific to business customers in the metropolitan areas would give similar results as SWB's loop cost for Plexar services, an average loop cost of \$6.00 or less.

¹¹SWB General Exchange Tariff, Section 4, Original Sheet 17 (effective July 17, 1992).

service support, it lowers support requirements from its own "competitive" services and seeks to place those support requirements on its competitors. And, in its filing in state court, SWB has the boldness to assert that "[a]ccess charge revenues support universal service..."¹² and complains that the TPUC would discount the interstate EUCL.¹³ Yet SWB by deeply discounting EUCL for its own retail Centrex customers, plainly demonstrates that it wants its competitors to subsidize its competitive offerings. To make up for selling competitive retail loops below its cost, SWB would have the courts and this Commission charge its competitors the difference. Further, unless this goal is achieved, SWB threatens to mount a campaign claiming that the state PUCs and this Commission have violated the "Takings" Clause of the Constitution.¹⁴

¹²SWB General Exchange Tariff, Section 4, Original Sheet 5, paragraph 1.28 (effective July 17, 1992).

¹³Southwestern Bell Tele. Co. v. Public Utility Comm'n of Texas, supra, n. 1 at para. 57.

¹⁴SWB further claims that the TPUC has violated state law by pricing interconnection and unbundled elements at TELRIC instead of "actual" costs. Id. at paragraphs 41, 47, 53 and 67. Yet SWB has repeatedly, and continually since the mid 1970s, asserted that incremental costs are relevant for pricing competitive services. See, e.g., Southwestern Bell General Rate Case, Texas PUC Docket No. 78 (1976); In the Matter of Cost of Service Study of Southwestern Bell Telephone Co., Case No. 18,309, 21 Mo. PSC Rpts. 327 (1977); In the Matter of the Application of Southwestern Bell Telephone Company to Revise and Restructure According to Cost Causation the Rates and Charges Applicable to Certain Competitive and Nonbasic Intrastate and Exchange Telephone Communications Services Furnished Within Oklahoma, Oklahoma Cause No. 26755 (1979); Petition of Southwestern Bell Telephone Company for Authority to Change Rates Statewide, Texas Docket No. 3340 (1980); Application of Southwestern Bell Telephone Company for Authority to Increase Rates, Texas Docket 3920 (1981); Southwestern Bell Rate Case, Texas PUC Docket 4545 (1982); Permission and Authority to Establish New Intrastate Rates, Tolls and Charges Applicable to Communications Services Furnished in the State of Kansas, Kansas Docket No. 128-811U (1982); Petition

GTE's efforts to thwart the emergence of local exchange competition are so pervasive and well documented as to require only a short comment. Simply put, GTE has appealed every single local exchange competition effort taken by any state commission in which GTE has local exchange monopolies.

Given the unremitting efforts of the ILECs to frustrate local exchange competition, it is clear that a prescriptive approach to access charge reform, based on TELRIC costing, is the only method available to the Commission to ensure that local exchange competition actually will develop. Further, it is equally clear that the existence of meaningful facilities-based local exchange competition should be the bellwether requirement before allowing market-based ILEC local access charges to be put into effect. Only by prescribing an access charge rate structure based on TELRIC can the Commission have any confidence that local exchange competition -- a key goal of the 1996 Act -- will emerge. Moreover, for the same reason, IXCLD urges the Commission

of the PUC of Texas for an Inquiry Concerning the Effects of the MFJ and the Access Charge Order from Southwestern Bell Telephone Company and the Independent Telephone Companies, Docket No. 5113 (1983); Southwestern Bell Telephone Company Rate Case, Docket 5220 (1983); In the Matter of the Application of Southwestern Bell Telephone Company for an Order Adjusting its Intrastate Rates, Charges, Services and Practices, Oklahoma Cause No. 28002 (1983); Southwestern Bell Petition for General Rate Case Before the PUC of Texas, Docket No. 6200 (1985); In re: Inquiry of the Oklahoma Corporation Commission Concerning the Development of Intrastate Access Charges, Oklahoma Cause No. 28309 (1986). Moreover, SWB has hired nationally known economists to advance its incremental cost pricing theory before the state commissions, including Dr. Alfred Kahn of Cornell University, Dr. Jack Wenders of the University of Idaho, the late Dr. Frank Alessio of the University of Arizona, and Dr. Richard Emerson, president of INDETEC. Southwestern Bell also employed several NERA associates who are noted experts in the field of microeconomics as it relates to telecommunications, including Dr. William Taylor and Dr. Miles Bidwell, Jr.

to require the existence of effective facilities-based local exchange and local exchange access competition as a condition precedent to RBOC re-entry into the provision of in-region interLATA long distance service pursuant to §271 of the 1996 Act.

III. A Prescribed Access Charge Rate Structure Based on TELRIC Would Not Occasion an Impermissible Fifth Amendment Taking (NPRM §VII.B)

In arguing in favor of a revenue neutral market-based approach to access charge reform, the ILEC commentators uniformly assert that imposition of a prescribed access charge rate structure, based on forward looking costs, would deprive them of the "right" to recover certain of their embedded costs. This, the ILECs maintain, would be an impermissible Fifth Amendment taking. The Commission, however, should not be cowed by such transparent and self-serving ILEC saber rattling.

In advancing this contention, the ILECs place substantial reliance on decisions of the United States Supreme Court in Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989) [hereinafter cited as Duquesne Light] and Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944) [hereinafter cited as Hope]. These cases, however, clearly recognize that a regulated utility has no right to the maintenance of a particular overall rate of return. Hope, 320 U.S. at 601. In Hope, the Supreme Court also made clear that "the mere fact that the value [of a regulated utility's property] is reduced does not mean that the [rate] regulation is invalid." Id. Moreover, an impermissible Fifth Amendment taking occurs only when an agency's actions occasion rates that are so low as to "jeopardize the financial integrity of the [regulated] companies,

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either by leaving them insufficient capital or by impeding their ability to raise future capital." Duquesne Light, 488 U.S. at 312. The ILECs have not made and cannot make a substantive showing in this proceeding that prescribed access charge reform, based on TELRIC, will have the effect on them required by Duquesne Light. Therefore, the Commission can confidently prescribe access charge reform without running afoul of the Fifth Amendment taking clause.¹⁵

IV. Conclusion

For the reasons set forth in its comments and in these reply comments, IXCLD urges the Commission: (1) to adopt the prescriptive approach to access charge reform, employing TELRIC costing; and (2) not to adopt a "revenue neutral" approach to access charge reform.

Respectfully submitted,



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¹⁵IXCLD invites the Commission's attention to the more extensive discussion of this issue that appears in the Comments of AT&T at pp. 39-41 and MCI at pp. 28-33.